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(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.153(b) of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within 30 days of the action.

Subpart Q [Reserved]

Subpart R—Taking of Marine Mammals Incidental to Operation and Maintenance of the Neptune Liquefied Natural Gas Facility Off Massachusetts

SOURCE: 76 FR 34172, June 13, 2011, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 34172, June 13, 2011, subpart R was added, effective July 11, 2011 through July 10, 2016.

§ 217.170 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Neptune LNG LLC (Neptune) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to commissioning and operation, including maintenance and repair activities, at the Neptune Deepwater Port (Port).

(b) The taking of marine mammals by Neptune may be authorized in a Letter of Authorization only if it occurs at the Neptune Deepwater Port within Outer Continental Shelf blocks NK 19-04 6525 and NK 19-04 6575, which

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are located at approximately 42°28'09" N. lat and 70°36'22" W. long.

§ 217.171 Effective dates.

Regulations in this subpart are effective from July 11, 2011, through July 10, 2016.

[76 FR 35996, June 21, 2011]

§ 217.172 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 217.177 of this chapter, the Holder of the Letter of Authorization (hereinafter “Neptune”) may incidentally, but not intentionally, take marine mammals within the area described in § 217.170(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The incidental take of marine mammals under the activities identified in § 217.170(a) is limited to the following species and is limited to Level B Harassment:

(1) Mysticetes:

(i) North Atlantic right whale (*Eubalaena glacialis*)—120 (an average of 24 annually).

(ii) Fin whale (*Balaenoptera physalus*)—145 (an average of 29 annually).

(iii) Humpback whale (*Megaptera novaeangliae*)—390 (an average of 78 annually).

(iv) Minke whale (*Balaenoptera acutorostrata*)—90 (an average of 18 annually).

(v) Sei whale (*Balaenoptera borealis*)—60 (an average of 12 annually).

(2) Odontocetes:

(i) Long-finned pilot whale (*Globicephala melas*)—595 (an average of 119 annually).

(ii) Atlantic white-sided dolphin (*Lagenorhynchus acutus*)—1,935 (an average of 387 annually).

(iii) Bottlenose dolphin (*Tursiops truncatus*)—50 (an average of 10 annually).

(iv) Common dolphin (*Delphinus delphis*)—100 (an average of 20 annually).

(v) Risso's dolphin (*Grampus griseus*)—100 (an average of 20 annually).

(vi) Killer whale (*Orcinus orca*)—100 (an average of 20 annually).

(vii) Harbor porpoise (*Phocoena phocoena*)—25 (an average of 5 annually).

(3) Pinnipeds:

(i) Harbor seal (*Phoca vitulina*)—75 (an average of 15 annually).

(ii) Gray seal (*Halichoerus grypus*)—75 (an average of 15 annually).

§217.173 Prohibitions.

Notwithstanding takings contemplated in §217.170 and authorized by a Letter of Authorization issued under §§216.106 and 217.177 of this chapter, no person in connection with the activities described in §217.170 may:

(a) Take any marine mammal not specified in §217.172(b);

(b) Take any marine mammal specified in §217.172(b) other than by incidental, unintentional Level B Harassment;

(c) Take a marine mammal specified in §217.172(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§216.106 and 217.177 of this chapter.

§217.174 Mitigation.

(a) When conducting the activities identified in §217.170(a), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 217.177 must be implemented. These mitigation measures include but are not limited to:

(1) Major Repairs (May 1–November 30):

(i) During repairs, if a marine mammal is detected within 0.6 mi (1 km) of the repair vessel (or acoustically), the vessel superintendent or on-deck supervisor shall be notified immediately. The vessel's crew will be put on a heightened state of alert. The marine mammal will be monitored constantly to determine if it is moving toward the repair area.

(ii) Repair vessels shall cease any movement in the area if a marine mammal other than a right whale is sighted within or approaching to a distance of 100 yd (91 m) from the operating repair vessel. Repair vessels shall

cease any movement in the construction area if a right whale is sighted within or approaching to a distance of 500 yd (457 m) from the operating vessel. Vessels transiting the repair area, such as pipe haul barge tugs, shall also be required to maintain these separation distances.

(iii) Repair vessels shall cease all sound emitting activities if a marine mammal other than a right whale is sighted within or approaching to a distance of 100 yd (91 m) or if a right whale is sighted within or approaching to a distance of 500 yd (457 m), from the operating repair vessel. The back-calculated source level, based on the most conservative cylindrical model of acoustic energy spreading, is estimated to be 139 dB re 1 µPa.

(iv) Repair activities may resume after the marine mammal is positively reconfirmed outside the established zones (either 500 yd (457 m) or 100 yd (91 m), depending upon species) or if the marine mammal has not been re-sighted in the established zones for 30 minutes.

(v) While under way, all repair vessels shall remain 500 yd (457 m) away from right whales and 100 yd (91 m) away from all other marine mammals, unless constrained by human safety concerns or navigational constraints.

(vi) All repair vessels 300 gross tons or greater must maintain a speed of 10 knots (18.5 km/hr) or less. Vessels less than 300 gross tons carrying supplies or crew between the shore and the repair site must contact the Mandatory Ship Reporting System, the U.S. Coast Guard (USCG), or the protected species observers (PSOs) at the repair site before leaving shore for reports of recent right whale sightings or active Dynamic Management Areas (DMAs) and, consistent with navigation safety, restrict speeds to 10 knots (18.5 km/hr) or less within 5 mi (8 km) of any recent sighting location and within any existing DMA.

(vii) Vessels transiting through the Cape Cod Canal and Cape Cod Bay (CCB) between January 1 and May 15 must reduce speeds to 10 knots (18.5 km/hr) or less, follow the recommended routes charted by NOAA to reduce interactions between right whales and